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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna Searcy, Secretary
Federal Communications Commission
1919 M Street NW Suite 222
Washington, D.C. 20554

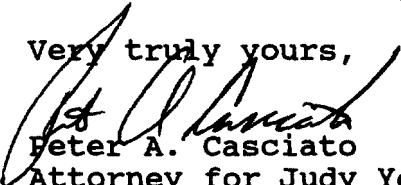
Re: MM Docket No. 93-95 Windsor, CA

Dear Ms. Searcy:

Enclosed for filing in the above-referenced proceeding are an original and seven copies of applicant Judy Yep Hughes' (BPH-911115MT) (1) Opposition to Petition to Enlarge Issues and (2) Motion to Strike. Please return the extra copy of each pleading to the undersigned in the enclosed self-addressed stamped envelope.

Should you have any questions concerning this matter, please contact the undersigned.

Very truly yours,


Peter A. Casciato
Attorney for Judy Yep Hughes

enclosures

cc: Hon. Richard Sippel,
Administrative Law Judge w/encls.
Eric Hilding w/encls.
Public File w/encls.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-95
)	
ERIC R. HILDING)	File No. BPH-911115MR
)	
JUDY YEP HUGHES)	File No. BPH-911115MT
)	
For a Construction Permit)	
For a New FM Station on)	
Channel 281A in)	
Windsor, California)	

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To: Richard L. Sippel
Administrative Law Judge

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OPPOSITION TO MOTION TO ENLARGE ISSUES

Judy Yep Hughes, by her attorney and pursuant to Sections 1.294 and 1.4 of the Commission's rules, hereby opposes the Motion to Enlarge Issues filed by Eric Hilding. As discussed below, the Hilding motion is a irrational diatribe concerning the alleged inaction or actions of the Commission and the United States Congress which, according to Hilding, have deprived him of his civil rights and discriminated against him by failing to give him comparative preferences as a white male, and the initiator of a rulemaking that resulted in the Windsor allocation. Not to minimize these instances of discrimination, Hilding also asserts that the hearing designation order in this proceeding discriminated against him by allowing Hughes to amend her engineering proposal. Finally, Hilding claims that his mere proposal of a single-bay FM antenna and utilization of a compact disc quality music service requires the addition of issues in this proceeding so as to permit him some form of "technical merit" enhancement.

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As further discussed below, Hilding has not been discriminated against -- and even if he has, as part of a generic unspecified class of persons -- his claims of discrimination do not rise to the level of an issue that this proceeding can specify, adjudicate or determine as a matter of fact or law. His

(80%) defective nature of its applications processing procedures" to the United States Circuit Court in past cases, Metro Broadcasting, Inc. v. FCC and Jerome Thomas Lamprecht v. FCC. Hilding then also claims that Senator Hollings unspecified appropriations [bill] riders have contributed to his discrimination by perpetuating minority and female preferences.

Hilding's nonsensical claims must be denied. First, Section 1.229(d) of the Commission's rules requires specific allegations of fact supported by affidavits of persons with personal knowledge, or actions of which official notice can be taken, to entertain motions to enlarge. Obviously, Hilding's allegations are unsupported under all of these criteria. Second, Section 1.244 of the Commission's rules circumscribes the authority of the presiding judge so that he may only act on motions to enlarge consistent with the Administrative Procedure Act ("APA"). In that regard, no section of the APA allows the presiding judge to add issues against an applicant in the comparative hearing context based on appropriations riders by the Senate, alleged non-specific Commission representations to the Court of Appeals or the results of alleged Commission inaction.

Similarly, Section 553 of the APA is to be followed by the Commission in rulemaking proceedings when changing, adding or deleting policy matters, a course of action which the Commission has assiduously followed in the Comparative Hearing Rulemaking, supra. In direct contravention thereof, Hilding is requesting that the presiding judge violate Section 553 of the APA and

prejudge the outcome of the Comparative Hearing Rulemaking by adding issues concerning discrimination against Hilding in favor of minorities,¹ and adjudicate whether he is entitled to a pioneer preference based on a motion devoid of factual support.

In the Comparative Hearing Rulemaking, the Commission is considering but has not determined whether pioneer preferences should be awarded comparative applicants and, if so, the criteria for such preferences. However, the Commission has clearly stated in a variety of cases that it does not propose to apply fundamental changes in its licensing criteria to current cases such as the present one. However, it may do so to cases not yet designated for hearing. See e.g. Anchorage Broadcasting Limited Partnership, 7 FCC Rcd 4566 (1992). Nonetheless, if the Commission were to choose to apply changes in its licensing criterion to cases already in hearing, it is at that point which Mr. Hilding should bring his motion. Conversely, if the Commission chose not to do so, Mr. Hilding, who has participated in the Comparative Hearing Rulemaking proceeding, could then properly bring his concerns to the Commission by way of a petition for reconsideration, followed by a court appeal, if he so chooses. Thus, in no way should the presiding judge subvert the Commission's processes by adding issues based on Hilding's mere vituperative commentary.

¹ The truly irrational nature of Hilding's motion is belied by his claims he has been discriminated against in this proceeding based on female preferences which no longer exist.

B. Hilding's Claim For A "Technical Merit" Issue Has No Basis In Commission Policy Or Precedent.

Neither the Policy Statement nor Commission precedent make any provision for a "Technical Merit" enhancement credit for the use of specific antenna or form of music service delivery vehicle. Rather, the Policy Statement makes clear that it is interested in equipment proposals only if they are not adequate to carry out program plans. Ibid. 5 RR 2d at 1912, fn. 10. Thus, Hilding's request for such an enhancement preference must be denied.

C. Hilding's Request For An Issue Based On the Hearing Designation Order's Treatment Of Ms. Hughes' Engineering Proposal Must Be Denied.

The Hearing Designation Order ("HDO") provided Ms. Hughes the opportunity to amend her application to reflect the elevation of her proposed transmitter site at 499 meters. See HDO DA93-330 released April 8, 1993 at para. 2.² Hilding's claims of discrimination are nothing more than an attempt to reargue the HDO which is contrary to Section 1.106(a)(1) of the Commission's rules and Atlantic Broadcasting Company, 5 FCC 2d 717, 8 RR 2d 991 (1966).³ Thus, this issue should not be added.

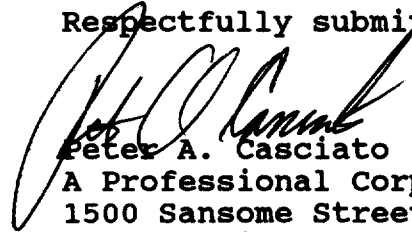
² This is consistent with Report and Order Related To Processing of FM and TV Applications MM Docket No. 84-750, 50 FR 19936 (1985), 58 P&F 2d 776, recon. denied, 50 FR 43157 (1985) & Statement of New Policy Regarding Commercial FM Applications That Are Not Substantially Complete or Otherwise Defective ("Hard Look Order") 50 FR 19445, 58 P&F 2d 166 (1985).

³ Moreover, no party has a vested interest in the disqualification of a competing applicant, particularly when the Commission favors a choice among qualified applicants. Crosthwait v. FCC, 584 F. 2d 550, 44 RR 2d 107 (D.D. Cir. 1978).

Conclusion

For all of the foregoing reasons, Hilding's Motion should be dismissed and denied.

Respectfully submitted,



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May 24, 1993

Counsel to Judy Yep Hughes

CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

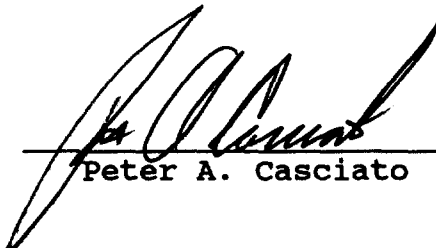
On May 25, 1993, I caused the attached Opposition to Motion to Enlarge Issues of Judy Yep Hughes and accompanying documents to be served by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be sent by regular U.S. Mail in San Francisco, CA for delivery as follows:

Hon. Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
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